



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/00482/2019

**THE IMMIGRATION ACTS**

Heard at Field House  
On 6 August 2019

Decision & Reasons Promulgated  
On 14 August 2019

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

MR FILIPE DIAS  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: No attendance

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is an appeal against the decision of First-tier Tribunal Judge Lal (the Judge), issued on 1 April 2019, by which the appellant's appeal against the decision of the respondent to refuse to issue him with a residence card under the relevant EEA Regulations was dismissed.

2. In granting permission to appeal Judge of the First-tier Tribunal Hollingworth granted permission on all grounds.
3. By way of an undated letter received by the Tribunal on 5 August 2019 Sterling Chance Solicitors requested that the hearing proceed in the absence of the appellant and his representatives as the appellant "is not working at the present time and is not able to afford any representation for the hearing and we therefore invite the Tribunal to make a decision in light of the facts and documents that are available".

### **Anonymity**

4. The Judge did not issue an anonymity order and no application for such an order was made before me.

### **Background**

5. The appellant is a national of India and is aged 45. He applied for a residence card as the dependent son (aged over 21) of an EEA national exercising treaty rights in this country. His sponsor is his mother, a Portuguese national. Accompanying the application was a letter from the sponsor which detailed inter alia that the appellant arrived in the United Kingdom on 3 April 2018 to live with his wife and three children. However, following marital difficulties his wife was unwilling to support his application to remain in this country. The sponsor confirmed that the appellant was presently living with her and that she was paying his rent and other expenses as he enjoys no lawful presence in this country.
6. The respondent refused the application by way of a decision dated 16 January 2019. The respondent observed that the appellant had not provided adequate evidence to show that he qualified for a right to reside as a family member of an EEA sponsor. It was noted that none of the documentary evidence provided established that he was residing in the same address as his sponsor and further that no bank statements, evidence of money transfers or any evidence had been produced to establish that he was reliant upon his sponsor. The respondent further noted that the appellant was not named in the tenancy agreement submitted with the application.
7. The appellant appealed the decision and a notice of appeal was received by the First-tier Tribunal on 29 January 2019. By way of a letter dated 22 March 2019 the appellant's solicitors, Sterling Chance, informed the First-tier Tribunal that the hearing was to be decided on papers.

### **Hearing before the FtT**

8. The appeal came before the Judge at Hatton Cross on 26 March 2019. The Judge observed that he had before him the respondent's bundle but that no bundle had been filed on behalf of the appellant. In dismissing the appeal, the Judge observed at [7] of his decision:

"The starting point for the Tribunal's analysis is whether the appellant has provided any evidence to discharge the above burden. It finds he has not done so; in fact, there is no evidence produced at all by the appellant. He has not provided any material whatsoever to rebut or deal with the concerns raised in the refusal letter and therefore has singularly failed to discharge the legal and evidential burden upon him."

### **Grounds of appeal**

9. The grounds of appeal are concise and primarily place reliance upon the original grounds of appeal accompanying the notice of appeal filed with the First-tier Tribunal in January 2019. I am concerned that the author of the grounds before this Tribunal appears unaware that an appeal to this Tribunal is to be on a point of law alone and is not simply a restatement of the original case: Rule 33(5)(a) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Reliance was further placed upon a letter from the sponsor that was before the Judge but was not considered.
10. In granting permission to appeal Judge of the First-tier Tribunal Hollingworth observed: "The appellant is entitled to presume that the material submitted with the application will be provided to the Judge for the purposes of the Judge considering the matter on the papers."
11. No Rule 24 response was filed by the respondent in this matter.

### **Decision on Error of Law**

12. The Judge was correct to identify that the appellant had not filed a bundle in accordance with directions. However, the respondent's bundle contains a letter from the sponsor dated 1 October 2018, a birth certificate naming the sponsor as the appellant's mother, a copy of the sponsor's Portuguese identification card, a bank statement from the sponsor confirming receipt of her weekly wages from her employer and the sponsor's tenancy agreement dated 1 August 2018. These documents were not expressly considered by the Judge. It is a longstanding principle that proper, adequate reasons must be given that deal with the substantial points that have been raised in an appeal and whilst it is unnecessary for a Tribunal to set out the evidence and arguments before it or the facts found by it in detail, the

reasons must be proper, adequate and intelligible and enable the person affected to know why they have been successful or unsuccessful. The failure to consider the documentary evidence relied upon by the appellant can only mean that the Judge failed to engage with the appellant's case as put forward in any significant respect.

13. Having identified an error of law, I am required to consider its materiality. Upon considering the evidence in the round I am satisfied the appellant was not substantially prejudiced by the failure to consider the evidence relied upon because it cannot satisfy the burden placed upon him to establish that he is a dependent family member.
14. The appellant has established by way of his birth certificate that he is a direct family member of the sponsor. I note that it is not the appellant's position that he was dependent upon his mother when he entered the country. He sought entry to join his wife and children. At an unknown date the marriage broke down. The Court of Appeal confirmed in *Pedro v Secretary of State for Work and Pensions* [2009] EWCA Civ 1358 [2010] 2 CMLR 20 that where dependency is necessary the family member does not need to be living or have lived in an EEA state where the EEA national sponsor also lives or has lived. Their dependency on the EEA national sponsor does not need to have existed before they came to the United Kingdom.
15. I am therefore required to consider the issue of dependency within this country. The sponsor has provided bank statements running to three pages, covering a period from April 2018 to September 2018. The statement confirms weekly payments from her employer in the region of £290 net per week. I therefore accept that she was exercising EEA treaty rights between April and September 2018. The sole evidence of the appellant residing with the sponsor, from an unknown date, is a one page letter where the sponsor confirms "I confirm that Filipe is presently living with me and that I am paying for his rent and all other expenses as he is not able to work as he does not have any valid residence card at the time". However, the only document submitted by the appellant as to his accommodation is a letter from JobCentre Plus dated May 2018 which details him living at an address in Hayes. Whilst his mother moved to her new home in Southall in August 2018, she was previously residing at a different property in Southall whilst her son resided in Hayes. There is no corroborative documentary evidence establishing that mother and son resided together in Southall between August 2018 and the date of the application in October 2018. Whilst the sponsor asserts that her son was living with her in October 2018, no detail is provided as to when he moved in with her or as to how he supported himself prior to such time. Her evidence is very limited in nature. Details as to the appellant's marital breakdown are very limited and he has filed no witness statement addressing the issues raised within the respondent's decision letter.
16. In such circumstances the appellant is unable to satisfy the burden placed upon him to establish that he needs financial support from the sponsor, his mother, to meet his essential needs and therefore the error of law identified above is not material as the only reasonable decision that can be made by a judge considering this appeal on the evidence as presented is to refuse the appeal.

**Notice of decision**

17. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law. The decision of the First-tier Tribunal is upheld.
18. No anonymity direction is made.

Signed: *D O'Callaghan*

**Upper Tribunal Judge O'Callaghan**

Date: 6 August 2019